On January 7, 1941, the Freemont Canning Co. of Freemont, Mich., having filed a form of acceptance of service and authorization for taking of final decree, judgment of condemnation was entered and the product was ordered destroyed.

31150. Adulteration of dressed poultry. U. S. v. Clair F. Limbeck (Iowa Products Co.). Plea of guilty. Fine, $300 and costs. (F. & D. No. 42795. Sample Nos. 46703–D, 46705–D, 68198–D.)

This case was based on shipments of poultry into which water had been injected.

On June 9, 1940, the United States attorney for the Northern District of Iowa filed an information against Clair F. Limbeck, trading as the Iowa Products Co., Dubuque, Iowa, alleging shipment within the period from on or about October 7 to on or about December 24, 1938, from the State of Iowa into the States of New York and Illinois of quantities of poultry which was adulterated in that poultry, namely, dressed geese, dressed ducks, and dressed chickens, containing added water had been substituted wholly or in part for normal poultry, which it purported to be.

On June 9, 1941, the defendant entered a plea of guilty and the court imposed a fine of $300 and costs.

31151. Adulteration of Brazil nuts. U. S. v. Wm. A. Higgins & Co., Inc. Tried to the court. Judgment of guilty. Fine, $200. (F. & D. No. 42530. Sample Nos. 62597–C, 62598–C.)

This case involved Brazil nuts which were in part moldy, rancid, and decomposed.

On August 23, 1938, the United States attorney for the Southern District of New York filed an information against William A. Higgins & Co., Inc., New York, N. Y., alleging shipment by said defendant on or about October 26, 1937, from the State of New York into the State of Pennsylvania of a quantity of Brazil nuts which were adulterated in that they consisted in whole or in part of a decomposed substance, namely, Brazil nuts which were moldy, rancid, or decomposed. The article was labeled in part: "Tastbest * * * Brazils."

On July 8, 1939, the defendant having waived trial by jury and the case having been submitted to the court for determination, judgment of guilty was entered and a fine of $200 was imposed. In pronouncing judgment, the court handed down the following opinion:

KNOX, *District Judge*. "In this case, the United States filed an information against defendant charging it with having shipped in interstate commerce, from New York City to Philadelphia, Pa., upon October 26, 1937, a quantity of Brazil nuts, which being moldy, rancid, and decomposed, were adulterated within the provisions of the Food and Drugs Act of June 30, 1906 (21 U. S. C. A. 2 and 8). Defendant having entered a plea of not guilty the issues came on for trial before me upon June 26, 1939. When the case was called, the United States attorney and counsel for the defendant stipulated that the issues should be tried before the court, without intervention by a jury. Evidence having been taken, the case argued, and briefs submitted, the entry of a verdict must now be directed.

"Once before, upon December 7, 1931, defendant was alleged to have committed a similar offense. Upon that occasion, defendant entered a plea of guilty and was fined $100. In consequence thereof, defendant is here alleged to be a second offender.

"If, in order to bring about the conviction of defendant, it were required that as of the date of shipment its knowledge of the condition of the nuts be shown, I should quickly decide that a verdict of not guilty be entered. The statute, upon which the information is based, contains no such requirement. Immediately the nuts moved in interstate commerce, and provided they were adulterated, the offense charged became complete. Aside from the fact that, in imposing penalties, considerations of a shipper's knowledge of the condition of the goods and his intent in making the shipment might properly be taken into account, these features of the case are without relevancy here.

"Upon the trial, the evidence satisfactorily indicated that defendant had every intention and purpose in shipping sound and edible goods. Prior to their shipment, they were sampled by two concerns which make a practice of engaging in such work. On each occasion, the nuts were found to be well within the range of tolerance approved by the Department of Agriculture. Upon arrival at destination, the goods were again sampled by a representative of the consignee.

Once more they were found to be of satisfactory quality. Upon this finding, the consignee, a reputable merchandising company catering to high class trade, paid the purchase price of $1,800 or $1,900.

"Notwithstanding all this, 18 days following shipment, when inspectors of the Department sampled the nuts, the unsound and deteriorated nuts were found to comprise from 17.3 to 18.8 percent of the shipment, the range of tolerance being but 10 percent.

"Thereafter, the Government libeled the nuts and defendants making claim to them, admitted their deteriorated condition as alleged in the libel. Thereupon, the claimant was permitted to recondition the nuts. When defendant was asked for a reconciliation of such admission with the present plea of 'not guilty,' it was said that, inasmuch as the admission was necessary in order to obtain possession of the goods for reconditioning, such action was justifiable while, for the purpose of avoiding reflection upon the defendant's reputation, a defense which was believed to be complete should be interposed.

"Although it may be that the admission of the allegations contained in the libel of condemnation is not res adjudicata of the issues represented by the information, it is, nevertheless, some evidence that here may properly be taken into account. This is so, particularly, for the reason that, upon the trial, there was no evidence that the reconditioning process disclosed proof which indicated that, in sampling the goods, the Government inspectors had done so wrongfully, or made a mistake. Its absence justifies an inference that such proof was non-existent and that the Government's sampling was properly and fairly done. This, I think, disposes of defendant's argument to the effect that the sampling of the United States was not representative of the entire shipment.

"If, then, defendant's samplings made before shipment and that which was taken upon arrival of the nuts at destination, were accurately done, and the examinations carefully made, the only way to account for an increase of deterioration percentage from 7.7 to 18.8 in one case, and from 7.6 to 17.3 in the other, and within a period of 18 days, is that the nuts were possessed of some inherent vice which led to their rapid decay. Were this the fact, it would have been revealed, I assume, by the reconditioning process. But, here again, there was no proof.

"Furthermore, it was testified by representatives of both consignor and consignee that sound nuts, if properly cured, will show no such deterioration within 18 days as, it is argued, here occurred. Much as I should like to direct the acquittal of defendant, the facts and the law compel me to adjudge it guilty of the offense set forth in the information.

"Believing that the offense was not wilfully committed, I shall not impose the maximum penalty. I feel, nevertheless, that the Government should recover some portion of the expenses of prosecution, which I find to have been justified, and will fine defendant the sum of $200. Judgment may be entered accordingly."

31152. Adulteration and misbranding of olive oil. U. S. v. John Russo, alias F. Alfono, alias P. Santo. Plea of guilty. Fine, $500. (F. & D. No. 42519. Sample Nos. 56827–C to 56829–C, incl., 65439–C, 71195–C.)

This product was found to consist essentially of cottonseed oil, the greater portion of which was artificially colored and artificially flavored, and to contain little or no olive oil.

On August 19, 1938, the United States attorney for the Southern District of New York filed an information against John Russo, alias F. Alfono, alias P. Santo, New York, N. Y., alleging shipment in interstate commerce on or about October 26 and November 15 and 17, 1937, from the State of New York into the States of New Jersey and Pennsylvania of quantities of olive oil which was adulterated and portions of which were also misbranded. The article was labeled in part: "Marca Gioiosa Olio Puro D'Oliva"; "Olio Finissimo La Gustosa Brand"; or "Sublime Olive Oil Superfine Brand Lucca."

The Gioiosa and the Sublime brands were alleged to be adulterated in that artificially flavored and colored cottonseed oil (1) had been mixed and packed therewith so as to lower or reduce their quality or strength; (2) had been substituted wholly or in part therefor; and (3) had been mixed with the article in a manner whereby inferiority was concealed. The La Gustosa brand was alleged to be adulterated in that a mixture of cottonseed oil and corn oil had been substituted in whole or in part for olive oil, which it purported to be.

The Gioiosa and the Superfine brands were alleged to be misbranded (1) in that they were offered for sale under the distinctive name of another article, namely,